REMARKS

This responds to the Final Office Action mailed on December 29, 2008.

No claims are amended, cancelled, or added; as a result, claims 1-37 remain pending in this application.

§ 112 Rejection of the Claims

Claims 1-3, 19-21 and 37 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description.

Applicant respectfully points out that the concept of multiple or different instruments in different audio tracks was disclosed in the examples in the specification, including at p. 4, lines 16-21, which describes playing different audio element tracks selected from a group of tracks including drum tracks, bass tracks, synth tracks, and sound effects tracks. The accompanying Figure 2 further shows a variety of synth, bass, drum, and sound effects tracks.

Page 4, lines 26-29 explicitly explains how playing different audio element tracks such as different drum tracks, different special effects tracks, and different synthesizer tracks, results in a more interesting and engaging experience for the game player.

Because these sections do explicitly recite and describe different instruments, applicant believes the specification supports the referenced claim amendments.

§ 102 Rejection of the Claims

Claims 1-37 were rejected under 35 U.S.C. § 102(a) as being anticipated by Hecht et al (U.S. Publication No. 2003/0073489 A1).

Hecht describes a wagering game system that includes a primary sound file, and a variant sound file that is associates with a player input event. When a specific event occurs the primary sound file is played, and when the player input event occurs the primary sound file is stopped and the variant sound file is played in place of the primary sound file. The variant sound file is a variation of the primary sound file (see, the Abstract).

The pending claims, in contrast, recite playing an audio track that comprises a plurality of selected audio element tracks that are played at the same time to create the played audio track, wherein the selected audio element tracks comprise two or more instruments played in the same

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key in synchronization and are selected by the wagering game machine based on at least one of random selection and a randomly ordered list. Hecht fails to describe playing two or more tracks at the same time, fails to disclose that such tracks comprise two or more different instruments, and fails to disclose that the audio element tracks are played at the same time to form an audio track based on at least one of random selection and a randomly ordered list.

More specifically, the audio tracks of Hecht are not played at the same time, but the primary sound file is played until the player input event at which time it is stopped and the variant sound file is played in its place (see, e.g., the Abstract and the Summary). The cited paragraph 55 describes how a user action can trigger this variant sound file change, as is described elsewhere throughout the specification, but no suggestion is made that multiple sound files play at the same time. Paragraph 55, also cited in the Office Action, makes clear that Hecht is about "the change from one sound recording to another" rather than playing two sounds at the same time.

The audio tracks are also not described as comprising different instruments played at the same time in synchronization, as is recited in each of the pending claims. The cited paragraph 50 describes that Hecht's primary and variant sound files as potentially having different keys, tempos, styles, or melodies. It does not discuss playing different instruments in different tracks a the same time, or playing such tracks together in synchronization.

Further, the Hecht reference fails to disclose that the audio tracks are selected based on at least one of random selection and a randomly ordered list. The Office Action cites the wagering game system's random access memory (RAM) as anticipating a random ordered list, but the cited portions of Hecht simply teach that the RAM is used to store the program code that changes the sounds, as described in the cited paragraph 43. Perhaps more significantly, the pending claims recite that the randomly selected element tracks are played at the same time to create a played audio track, whereas Hecht describes only switching from one track to another, however the tracks are chosen.

Because the cited Hecht reference fails to discuss playing two or more tracks at the same time, fails to disclose that such tracks comprise two or more different instruments, and fails to disclose that the audio element tracks are played at the same time to form an audio track based on at least one of random selection and a randomly ordered list, the pending claims are distinct

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from the cited Hecht reference. Reexamination and allowance of pending claims 1-37 is therefore respectfully requested.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 349-9581 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date   February 27, 2009   By _____

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 27, 2009.

Zhakalazky M. Carrion _____

Name _____   Signature